

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

U.S. NAVY SEALs 1-3; on behalf of themselves and all others similarly situated; **U.S. NAVY EXPLOSIVE ORDNANCE DISPOSAL TECHNICIAN 1**, on behalf of himself and all others similarly situated; **U.S. NAVY SEALs 4-26**; **U.S. NAVY SPECIAL WARFARE COMBATANT CRAFT CREWMEN 1-5**; and **U.S. NAVY DIVERS 1-3**,

Plaintiffs,

v.

LLOYD J. AUSTIN, III, in his official capacity as United States Secretary of Defense; **UNITED STATES DEPARTMENT OF DEFENSE**; **CARLOS DEL TORO**, in his official capacity as United States Secretary of the Navy,

Defendants.

Case No. 4:21-cv-01236-O

**PLAINTIFFS' SUPPLEMENTAL APPENDIX IN OPPOSITION TO DEFENDANTS'
ASSERTION OF MOOTNESS**

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1	NAVADMIN 038/23 COVID-19 Operational Risk Management Matrix for Deployments	0001-0007
2	Second Declaration of Levi Beard, Lieutenant Commander (Sel), USN	0008-0011
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4	Declaration of U.S. Navy SEAL 23	0016-0019
5	Declaration U.S. Navy SEAL 13	0020-0024

Respectfully submitted this 8th day of March 2023.

KELLY J. SHACKELFORD
Texas Bar No. 18070950
JEFFREY C. MATEER
Texas Bar No. 13185320
HIRAM S. SASSER, III
Texas Bar No. 24039157
DAVID J. HACKER
Texas Bar No. 24103323
MICHAEL D. BERRY
Texas Bar No. 24085835
JUSTIN BUTTERFIELD
TEXAS BAR NO. 24062642
DANIELLE A. RUNYAN*
New Jersey Bar No. 027232004
Holly M. Randall
Texas Bar No. 24128002
FIRST LIBERTY INSTITUTE
2001 W. Plano Pkwy., Ste. 1600
Plano, Texas 75075
Tel: (972) 941-4444
jmateer@firstliberty.org
hsasser@firstliberty.org
dhacker@firstliberty.org
mberry@firstliberty.org
jbutterfield@firstliberty.org
drunyan@firstliberty.org
hrandall@firstliberty.org

JORDAN E. PRATT
Florida Bar No. 100958* **
FIRST LIBERTY INSTITUTE
1331 Pennsylvania Ave., NW, Ste. 1410
Washington, DC 20003
Tel: (972) 941-4444
jpratt@firstliberty.org

*Admitted pro hac vice.

** Not yet admitted to the D.C. Bar, but
admitted to practice law in Florida. Practicing
law in D.C. pursuant to D.C. Court of Appeals
Rule 49(c)(8) under the supervision of an
attorney admitted to the D.C. Bar.

/s/ Heather Gebelin Hacker
HEATHER GEBELIN HACKER
Texas Bar No. 24103325
ANDREW B. STEPHENS
Texas Bar No. 24079396
HACKER STEPHENS LLP
108 Wild Basin Road South, Suite 250
Austin, Texas 78746
Tel.: (512) 399-3022
heather@hackerstephens.com
andrew@hackerstephens.com
Attorneys for Plaintiffs

Tab 1



Navy COVID-19 Operational Risk Management Matrix for Deployments

Peter Seguin
CDR MC USN
BUMED N44

(703)681-9474

peter.g.seguin.mil@health.mil

Pls.' Opp. to Assertion of Mootness Suppl. App. 0002



Assumptions

- This tool when, used in consultation with unit Medical Providers, can inform Commanders of the COVID-19 risk to mission
- This matrix is intended to inform decision making, not to direct measures upon a Command or force a Commander's decision
- There may be additional risk factors not contained in the matrix that can impact operational risk.
- The risk factors should be periodically reviewed as COVID-19 variants and other circumstances change

Pls.' Opp. to Assertion of Mootness Suppl. App. 0003



Navy COVID-19 Operational Risk Management Matrix for Deployments

Purpose: This matrix aims to reduce the risk of mission impact due to one or more cases of moderate/severe COVID-19 disease in a deployed service member where the organic medical team cannot provide adequate medical management

RISK FACTORS*	RTM	RTF	RTI	GREEN (0 POINTS)	YELLOW (1 POINT)	RED (2 POINTS)
Age of Any Unvaccinated Personnel			X		18-29 yrs	30+ yrs
Medical Conditions			X	0	1	2+
Number of Unvaccinated Personnel	X	X		1-10	11-49	50+
Percent of Crew Unvaccinated	X	X		<10%	10-29%	30%+
Mission Essential Personnel Unvaccinated	X			No		Yes
Masking for Unvaccinated Personnel	X	X		Yes/N95/KN95	Intermittent	No
Austere Location	X		X	No	Yes, MEDEVAC within 1 day	Yes, MEDEVAC within 2 days
Congregate Setting	X	X	X	No	Intermittent	Yes
Unit Medical Officer	X	X	X	Yes	MO Nearby	No
Foreign Nation Provides Near US Standard of Care			X	Yes	Within 24 hours	No
Liberty with Elevated COVID-19 Risk		X	X	Low	Medium	High
Severity of Currently Circulating Variant	X	X	X	Low	Medium	High
Risk to MEDEVAC Crew		X		Low	Medium	High

*Leaders may emphasize specific risk factor(s) that increase risk to mission based on the deployed environment and crew characteristic

Risk to Mission (RTM)
Risk to Force (RTF)
Risk to Individual (RTI)

LOW RISK TO MISSION <7 POINTS
MEDIUM RISK TO MISSION 7-11 POINTS
HIGH RISK TO MISSION 12+ POINTS

Pls. Opp. to Assertion of Mootness Suppl. App. 0004



Operational Risk Management Matrix for Deployments

RISK FACTORS*	RTM	RTF	RTI	GREEN (0 POINTS)	YELLOW (1 POINT)	RED (2 POINTS)
Age of Any Unvaccinated Personnel			X		18-29 yrs	30+ yrs
Medical Conditions			X	0	1	2+
Number of Unvaccinated Personnel	X	X		1-10	11-49	50+
Percent of Crew Unvaccinated	X	X		<10%	10-29%	30%+
Mission Essential Personnel Unvaccinated	X			No		Yes
Masking for Unvaccinated Personnel	X	X		Yes/N95/KN95	Intermittent	No
Austere Location	X		X	No	Yes, MEDEVAC within 1 day	Yes, MEDEVAC within 2 days
Congregate Setting	X	X	X	No	Intermittent	Yes
Unit Medical Officer	X	X	X	Yes	MO Nearby	No
Foreign Nation Provides Near US Standard of Care			X	Yes	Within 24 hours	No
Liberty with Elevated COVID-19 Risk		X	X	Low	Medium	High
Severity of Currently Circulating Variant	X	X	X	Low	Medium	High
Risk to MEDEVAC Crew		X		Low	Medium	High

LOW RISK TO MISSION <7 POINTS
MEDIUM RISK TO MISSION 7-11 POINTS
HIGH RISK TO MISSION 12+ POINTS

Steps

1. Calculate risk to mission points by evaluating the deployment risk factors based on crew characteristics and the deployed environment and location(s)
2. Based on the risk to mission determination (low/medium/high) consider and implement measures to decrease the risk of moderate/severe COVID-19 case(s) causing mission impact

Pls.' Opp. to Assertion of Mootness Suppl. App. 0005



Measures to Decrease Risk

- 1) Masking/additional HPM during a shipboard outbreak
- 2) Strict N95 use (masking) for first +/-10 days underway if embarking from an area with high community transmission
- 3) Testing all crew/pax prior to deployment
- 4) ROM for all crew/pax prior to a deployment
- 5) Units deploy with COVID-19 vaccine doses (if possible)
- 6) Units deploy with anti-viral medications (if possible)

Pls.' Opp. to Assertion of Mootness Suppl. App. 0006



Example Deployment Scenario: USS Nimitz (CVN 68, crew 5,000) deploys with 80 unvaccinated junior Sailors to RIMPAC

RISK FACTORS*	RTM	RTF	RTI	GREEN (0 POINTS)	YELLOW (1 POINT)	RED (2 POINTS)
Age of Any Unvaccinated Personnel			X		18-29 yrs	30+ yrs
Medical Conditions			X	0	1	2+
Number of Unvaccinated Personnel	X	X		1-10	11-49	50+
Percent of Crew Unvaccinated	X	X		<10%	10-29%	30%+
Mission Essential Personnel Unvaccinated	X			No		Yes
Masking for Unvaccinated Personnel	X	X		Yes/N95/KN95	Intermittent	No
Austere Location	X		X	No	Yes, MEDEVAC within 1 day	Yes, MEDEVAC within 2 days
Congregate Setting	X	X	X	No	Intermittent	Yes
Unit Medical Officer	X	X	X	Yes	MO Nearby	No
Foreign Nation Provides Near US Standard of Care			X	Yes	Within 24 hours	No
Liberty with Elevated COVID-19 Risk		X	X	Low	Medium	High
Severity of Currently Circulating Variant	X	X	X	Low	Medium	High
Risk to MEDEVAC Crew		X		Low	Medium	High

LOW RISK TO MISSION <7 POINTS
MEDIUM RISK TO MISSION 7-11 POINTS
HIGH RISK TO MISSION 12+ POINTS

Score: 10 Points =
Medium Risk to
Mission

**Action: 1) Implement Measures to
Decrease Risk (OR)
2) Accept Risk (based on Risk Tolerance
and as advised by Medical Providers)**



Tab 2

**UNITED STATES DISTRICT COURT
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FORT WORTH DIVISION**

U.S. NAVY SEALs 1-3; on behalf of themselves and all others similarly situated; **U.S. NAVY EXPLOSIVE ORDNANCE DISPOSAL TECHNICIAN 1**, on behalf of himself and all others similarly situated; **U.S. NAVY SEALs 4-26**; **U.S. NAVY SPECIAL WARFARE COMBATANT CRAFT CREWMEN 1-5**; and **U.S. NAVY DIVERS 1-3**,

Plaintiffs,

v.

LLOYD J. AUSTIN, III, in his official capacity as United States Secretary of Defense; **UNITED STATES DEPARTMENT OF DEFENSE**; **CARLOS DEL TORO**, in his official capacity as United States Secretary of the Navy,

Defendants.

Case No. 4:21-cv-01236-O

**SECOND DECLARATION OF LEVI BEAIRD,
LIEUTENANT COMMANDER (SEL), USN**

Pursuant to 28 U.S.C. §1746, I, Levi Beaird, declare under penalty of perjury as follows:

1. I am over the age of eighteen and competent to make this second declaration in support of Plaintiffs' assertion that this case is not moot.
2. As I fully explained in my first declaration, in 2017, I accepted a retention bonus of \$105,000, that was being paid in annual installments since 2017. Those payments stopped in November 2021 when I was unable to satisfy the Navy's requirements for retaining the bonus due to the Navy's negative treatment of my unvaccinated status.

3. Although the DoD's and the Navy's COVID-19 vaccine requirements have been rescinded, no one in my chain of command has discussed with me whether my bonus payments will ever resume. The total amount I have received so far is still \$75,000.

4. Additionally, despite the Navy's February 24, 2023, Department of the Navy Actions to Implement Coronavirus Disease 2019 Vaccine Rescission, stating that "[t]he service records for those Sailors and Marines so identified shall be reviewed and any adverse information related to their COVID-19 vaccine refusal shall be removed from the service record," I continue to have adverse information in my personnel file that will likely have adverse career consequences for me in the future.

5. Specifically, there is a Request for Complete Copy of Official Military Personnel File dated April 20, 2022, that was issued by the Navy Region Mid-Atlantic Commanding Officer to the Commander of the Navy Personnel Command (PERS 313). According to the request, the responsive record was to "be used in [my] Board of Inquiry proceedings." The only reason I was facing a Board of Inquiry was because the Navy was trying to discharge me for remaining unvaccinated against COVID-19 in accordance with my sincerely held religious beliefs.

6. If this information remains in my personnel records or the Navy's service records, it will likely result in adverse career consequences for me because anyone who has access to those records will know that I faced involuntary discharge from the Navy.

7. Because there is no context provided in the April 20, 2022, record request document explaining that the Board of Inquiry proceedings were the direct result of the DoD's and the Navy's August 2021 COVID-19 vaccine mandates, anyone with access to my service records will never know the reason why I faced involuntary separation.

8. The April 20, 2022, record request is adverse to me but has not been removed from my personnel records despite the Navy's February 24, 2023, guidance.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on March 8, 2023.

/s/ *Levi Beaird*

LEVI BEAIRD

Tab 3

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

U.S. NAVY SEALs 1-3; on behalf of themselves and all others similarly situated; **U.S. NAVY EXPLOSIVE ORDNANCE DISPOSAL TECHNICIAN 1**, on behalf of himself and all others similarly situated; **U.S. NAVY SEALs 4-26**; **U.S. NAVY SPECIAL WARFARE COMBATANT CRAFT CREWMEN 1-5**; and **U.S. NAVY DIVERS 1-3**,

Plaintiffs,

v.

LLOYD J. AUSTIN, III, in his official capacity as United States Secretary of Defense; **UNITED STATES DEPARTMENT OF DEFENSE**; **CARLOS DEL TORO**, in his official capacity as United States Secretary of the Navy,

Defendants.

Case No. 4:21-cv-01236-O

DECLARATION OF ANNMARIE ACEVEDO, LIEUTENANT, USN

Pursuant to 28 U.S.C. §1746, I, Annmarie Acevedo, declare under penalty of perjury as follows:

1. I am over the age of eighteen and competent to make this declaration in support of Plaintiffs' assertion that this case is not moot.

2. I am presently assigned to the United States Navy Aegis Ashore Missile Defense System Poland, Detachment. I am the Officer in Charge of the Detachment. I am responsible for manning, training, and equipping over 100 Sailors, both officer and enlisted, for deployment to Poland and in support of Ballistic Missile Defense operations in the European Command Area of Responsibility. This is a shore-duty assignment where I am presently non-operational.

Pls.' Opp. to Assertion of Mootness Suppl. App. 0013

3. I have been assigned to overseeing the Detachment since December 10, 2021.

4. I filed a religious accommodation request in September of 2021. At that time, I had finished Department Head school and was in the process of completing weapons officer training pipeline schooling. In November 2021, the Navy issued guidance stating that unvaccinated Sailors could not change duty stations (i.e., PCS), so the Navy was trying to keep me at the school I was attending at that time. But I needed to get home for childcare reasons because I did not have childcare past November, as planned. My Detailer found me a position at Aegis Ashore, where I am presently assigned, because I was not permitted to report to the ship to assume weapons officer duties, which was the next step in my career.

5. Since that time, I have not heard from my Detailer. But on March 1, 2023, he called to advise me that the Navy was trying to get me back to sea as soon as possible for a 12-month tour. My Detailer wants me to report to a ship in March 2023 and, according to him, the sooner I can get there, the better. This is a complete change in procedure from how the Navy was handling unvaccinated Sailors and their detailing for assignments since November 2021. It is also a change in normal procedure period.

6. Previously, the Navy would not allow me to go back to sea because of my vaccination status, so this is a very quick turn that my family is not prepared for. My spouse is a civilian surgical assistant on two different call schedules. I have no family to assist me with childcare, so when I go to training or sea duty, I need a nanny. Because I do not have or need a nanny while on shore duty, our family needs the standard amount of time typically offered by the Navy to make a plan. This amount of time is usually approximately six months.

7. In the past, when the Navy scheduled me for training or sea duty, I have had enough notice to prepare for childcare. But I am presently unable to report to a sea duty billet within the

next two to four weeks, especially considering it will take me away from my family for a consecutive 12 months (with a few days home here and there) because I will not be able to find suitable and trustworthy childcare in time.

8. Through this RAR process, I have suffered harm both personally and to my career. In an attempt to improve my overall situation, I submitted my package to join the Navy Reserve on March 2, 2023, since I need to be in a place to be competitive among my peers and advance my career. For the Navy to now suddenly say that I need to adjust the course of my entire life in a matter of weeks is impossible considering my family needs.

9. When I explained all of this to my Detailer, his answer was that I made a commitment to the Navy by signing a contract and there is no getting out of going to sea. But up until that day (March 1), no one was interested in having me at sea or even in the Navy because of my sincere religious beliefs against COVID-19 vaccination.

10. I appreciate that I can now be operational again and continue serving as an active-duty Sailor, but it appears that the Navy is intentionally rushing this process and not providing me, and likely others in my position, the appropriate amount of time necessary to get my family's childcare needs resolved before a 12-month sea-duty assignment. I am also not being given other sea-duty assignment options. These are all things the Navy would typically provide in the normal course of Navy assignments.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on March 8, 2023.

/s/ Annmarie Acevedo

ANNMARIE ACEVEDO

Tab 4

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

U.S. NAVY SEALs 1-3; on behalf of themselves and all others similarly situated; **U.S. NAVY EXPLOSIVE ORDNANCE DISPOSAL TECHNICIAN 1**, on behalf of himself and all others similarly situated; **U.S. NAVY SEALs 4-26**; **U.S. NAVY SPECIAL WARFARE COMBATANT CRAFT CREWMEN 1-5**; and **U.S. NAVY DIVERS 1-3**,

Plaintiffs,

v.

LLOYD J. AUSTIN, III, in his official capacity as United States Secretary of Defense; **UNITED STATES DEPARTMENT OF DEFENSE**; **CARLOS DEL TORO**, in his official capacity as United States Secretary of the Navy,

Defendants.

Case No. 4:21-cv-01236-O

DECLARATION OF U.S. NAVY SEAL 23

Pursuant to 28 U.S.C. § 1746 I, U.S. Navy SEAL 23, under penalty of perjury declare as follows:

1. I am over the age of eighteen and competent to make this declaration.
2. I am submitting this declaration in support of Plaintiffs' assertion that this case is not moot.
3. I am one of the original Plaintiffs in this action. I am presently an E-6.
4. I submitted several declarations in this matter that outline my religious objections to the

COVID-19 vaccine and the adverse actions the Navy has taken against me. Since January 3, 2022, I have been protected from separation from the Navy because of the preliminary injunction. Yet, consequences of the mandate still exist and personally impact my career in the Navy.

5. In April of 2022, I had an opportunity to submit a package to be considered for a leading petty officer position, which was a “milestone” leadership position. Within the Navy Special Warfare community, a milestone leadership position is one that must be completed in order to advance to the next grade and rank. Attaining that leadership position would have secured my eligibility to promote to E-7.

6. Because I was unable to even be considered for that position, I cannot advance to an E-7.

7. Even if the Navy gave me the opportunity to be competitive for a milestone leadership position today, I would be anywhere between one and three years behind others who are younger than me and do not have as much time in the Navy as me yet have been and are being selected for milestone positions ahead of me.

8. I have also not yet returned to an operational status. About two weeks ago, I inquired with my Chief Corpsman in medical about the status of my dive physical. My dive physical has not been approved due to my unvaccinated status. Approval of my dive physical is necessary for me to be operational and retain my special duty pays. I followed up with my Chief Corpsman again last week and provided him with NAVADMIN 038/23 to let him know that my dive physical should now be approved. To date, I have not received a response from him.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on March 6, 2023.

/s/ U.S. Navy SEAL 23
U.S. Navy SEAL 23

Tab 5

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

U.S. NAVY SEALs 1-3; on behalf of themselves and all others similarly situated; **U.S. NAVY EXPLOSIVE ORDNANCE DISPOSAL TECHNICIAN 1**, on behalf of himself and all others similarly situated; **U.S. NAVY SEALs 4-26**; **U.S. NAVY SPECIAL WARFARE COMBATANT CRAFT CREWMEN 1-5**; and **U.S. NAVY DIVERS 1-3**,

Plaintiffs,

v.

LLOYD J. AUSTIN, III, in his official capacity as United States Secretary of Defense; **UNITED STATES DEPARTMENT OF DEFENSE**; **CARLOS DEL TORO**, in his official capacity as United States Secretary of the Navy,

Defendants.

Case No. 4:21-cv-01236-O

SECOND DECLARATION OF U.S. NAVY SEAL 13

Pursuant to 28 U.S.C. § 1746 I, U.S. Navy SEAL 13, under penalty of perjury declare as follows:

1. I am over the age of eighteen and competent to make this declaration.
2. This is the second declaration I am submitting in support of Plaintiffs' assertion that this case is not moot.
3. As I stated in my first declaration submitted in support of this issue, I am one of the original Plaintiffs in this action. I am presently an E-6.
4. Before the August 24, 2021, mandate, I was recruited to fill a deploying leading petty

officer position for a deploying unit. This leadership position was a “milestone” leadership position. Within the Navy Special Warfare community, a milestone leadership position is one that must be completed in order to advance to the next grade and rank. Attaining that leadership position would have ensured my promotion to E-7.

5. Because I did not complete my time in that position, I cannot advance to an E-7. Even if the Navy gave me that position back today, it would not matter because in the Navy, you must be in a paygrade for three years in order to receive retirement pay for that rank. I have served in the U.S. Navy for 18 years and will reach my 20 years of service to retire before I could be an E-7 for three years. I will lose close to \$100,000 in overall retirement pay because I will not be able to retire as an E-7.

6. Back in 2021, in preparation for filling the milestone leadership position, I was sent to a specialized school in advance of my scheduled deployment. I was attending this school before the August 24, 2021 COVID-19 vaccine mandate went into effect.

7. While attending school, in or about September 2021, I submitted my Religious Accommodation Request (RAR). A few days after submitting my RAR, I was removed from the school by my command because I submitted a RAR.

8. A few weeks after that, when I was back at my home station, my commanding officer advised that all RARs were being denied. In December 2021, I discovered that I was removed from my leadership position when I was, without warning or notice from my chain of command, dropped from an official leadership chat thread for my platoon and realized that someone else suddenly assumed my leadership duties.

9. When I no longer filled a leadership position for my platoon, I was assigned

administrative busy work that I have performed daily and in person among individuals who are still deployable and in rotations to deploy. For example, I have been responsible for managing rollcall for 12-20 people on any given day and handling any random, administrative, non-deployable tasks that require attention. I performed these duties until I went on paternity leave in January 2023 and fully expect to be performing these duties when I return to work in April 2023. No one in my command has communicated with me about the Navy's updated policies or to tell me that I will be performing different duties upon my return to work. The duties I have been performing are well below my paygrade and below my level of education and training.

10. Despite my circumstances, I have excelled at performing these duties. As a result, four months ago, my current leadership asked if I could be returned to a deployable platoon, but the request was denied. Again, on February 1, a similar request was made by the Officer in Charge (OIC) of another deployable platoon for me to return to the deployable platoon, but it was denied by my Master Chief. Despite the rescission of the COVID-19 vaccine mandate, my Master Chief said that I would not deploy, but considering the change in policies, I could now be transferred to shore-duty. I have not received any information to suggest that I will return to a deployable platoon.

11. About a year and a half ago, my dive physical was denied approval due to my vaccination status. To date, I have not been advised that my dive physical has been processed and approved. This means I am still unable to sky dive and engage in combat diving, which are both tasks I am required to perform in the deployed environment. Approval of my dive physical is necessary for me to retain my special duty pays.

12. Considering my chain of command was quick to remove me from my position in a

specialized school a few days after I filed my RAR, and then a few weeks later my command removed me from my milestone leadership position, my expectation is that the same swift communication should occur now that the COVID-19 vaccine mandates have been rescinded and NAVADMIN 038/23 has been implemented.

13. Despite being on paternity leave, I am in regular contact with my supervisors and check my official email once or twice per week. But no one in my command has advised me of any change in status to my dive physical or my return to an operational status based on the new guidance implemented by the Navy and the Department of Defense.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on March 7, 2023.

/s/ U.S. Navy SEAL 13
U.S. Navy SEAL 13